

STATE OF MICHIGAN
COURT OF APPEALS

GERALD MAUSOLF, Conservator for ALEX
JAMES MAUSOLF, a Minor,

UNPUBLISHED
May 19, 2005

Plaintiff-Appellant,

v

NICOLE MARIE BUMGARDNER and JOAN
MARIE BUMGARDNER,

No. 260029
Grand Traverse Circuit Court
LC No. 03-023331-NI

Defendants-Appellees.

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Plaintiff Gerald Mausolf, conservator for Alex James Mausolf, a minor, appeals as of right the trial court order granting summary disposition in favor of defendants Nicole Marie Bumgardner and Joan Marie Bumgardner. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Alex Mausolf was struck by a car driven by Nicole Bumgardner. Alex, then six years old, sustained a five-centimeter zigzag laceration to his forehead that required stitches. Plaintiff filed suit alleging that the scar on Alex's forehead constituted a permanent serious disfigurement. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no evidence created a question of fact as to whether Alex's scar constituted a permanent serious disfigurement. The trial court agreed and granted the motion, noting that it met with Alex during a settlement conference, and that the scar was not noticeable from across a desk.

We review de novo a trial court's decision on a motion for summary disposition. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Whether a person has suffered a permanent serious disfigurement is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries, or if there is a factual dispute concerning the nature and extent of the injuries, but the dispute is not material to whether the plaintiff has suffered a permanent serious disfigurement. MCL 500.3135(2)(a). Otherwise, the determination whether the plaintiff suffered a permanent serious disfigurement is a question of fact for the jury.

Whether a scar amounts to a permanent serious disfigurement depends on its physical characteristics rather than its effect on the plaintiff's ability to live a normal life. *Kosack v Moore*, 144 Mich App 485, 491; 375 NW2d 742 (1985). Whether a scar is serious is a question to be answered by resorting to common knowledge and experience. *Nelson v Myers*, 146 Mich App 444, 446 n 2; 381 NW2d 407 (1985).

The uncontradicted evidence established that the scar on Alex's forehead is a permanent disfigurement; therefore, the issue before us is whether the trial court erred in concluding as a matter of law that the scar did not constitute a permanent serious disfigurement. Ascertaining the seriousness of a disfigurement may require physical observation by the trial court. We give great deference to observations made by the trial court. *Williams v Payne*, 131 Mich App 403, 411-412; 346 NW2d 564 (1984), overruled in part on other grounds in *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986). Plaintiff correctly notes that the trial court characterized the scar as one "at the very lowest end of seriousness;" however, the trial court made that comment in the context of an observation that any scar on the face could be considered more serious than a scar located on another part of the body. The trial court stated that before learning the subject matter of this case, it saw Alex and did not notice the scar on his forehead. In addition, the trial court remarked that the scar was not noticeable from across a desk.

In *Nelson, supra*, a case that predated the version of MCL 500.3135(2) currently in effect, we held that a three-centimeter, slightly depressed scar under the plaintiff's left eye did not constitute a permanent serious disfigurement as a matter of law.¹ We conclude, based on the photographs attached to defendants' motion for summary disposition, the trial court's observations, and authority such as *Nelson, supra*, that the trial court correctly concluded that plaintiff did not make out a prima facie case that Alex's scar constituted a permanent serious disfigurement.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

¹ Before MCL 500.3135(2) was amended, the question whether a scar constituted a permanent serious disfigurement was for the jury unless reasonable persons could not disagree. The current version of the statute makes the question one for the trial court in most situations.